In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 831

GENE LOGAN ALGER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 13) is reported at 325 F. 2d 502.

JURISDICTION

The opinion of the court of appeals was entered on November 15, 1963. A petition for rehearing was denied on January 20, 1964 (Pet. App. 19). The petition for a writ of certiorari was filed on February

14, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's conviction for conspiracy and for aiding and abetting the counterfeiting of money must be reversed because the jury acquitted a co-defendant who was one of several named co-conspirators.

STATEMENT

In an indictment returned in the United State District Court for the Southern District of Indiana, petitioner was charged with conspiracy with co-defendants Billings and McClung and one Mohler (not a defendant) to make and pass counterfeit money. In a second count, petitioner was charged with aiding and abetting Billings and McClung in counterfeiting money (R. 4-5). After a trial by jury, petitioner was found guilty. McClung had entered a plea of guilty (R. 99). Billings, who went to trial with petitioner, was acquitted by the jury. Petitioner was sentenced to 5 years' imprisonment on the conspiracy count and 7½ years on the substantive count, the terms to run concurrently (R. 6).

At trial the government produced some 27 witnesses—among them, suppliers of photographic and printing equipment who knew petitioner as a customer; secret service agents and officers who arrested the defendants; and friends and acquaintances who saw or took part in activity at petitioner's home, including the alleged co-conspirator Mohler.

Mohler testified as to meetings with petitioner, McClung and Billings in late 1960 and early 1961 at which time the making of counterfeit money was discussed. Petitioner, who worked as a printer, said that he could make $10 bills and that he could get an offset press for this purpose (R. 27-28). Petitioner and the others took a picture of a $10 bill in petitioner's back yard. Petitioner showed Mohler and Billings how to splice the negative and petitioner made an offset plate bearing the image. The plate was used on a press which had been assembled in the breezeway of petitioner's home. Petitioner ran the press (R. 28-29).

Mohler said that Billings, who worked as a helper in a garage operated by McClung, took very little part in the conversations—that if he did anything it was virtually what he was told to do. Mohler did not think that Billings could take a picture and knew that he could not operate a press. Billings ran errands but only at the direction of someone else (R. 41).

After petitioner's arrest, agents found purported $10 notes in the amount of $22,680, and an offset plate bearing the impression of such a note, wrapped in newspaper and concealed under an air conditioning duct above the rafters in petitioner's garage (R. 93-95, 119-120, 113-114). The notes bore a Crane Crest paper watermark—the same type of paper found near the press in petitioner's breezeway (R. 93, 115).

Petitioner testified that although Mohler had approached him about counterfeiting, he had refused to have anything to do with it. He said that he had be-

come suspicious that counterfeiting was taking place at his unlocked home during his absence during the daytime but that he had denied knowledge of it in order to protect McClung, his son-in-law, whom he had taught to use the press and who, he said, had ordered the press and the paper. Petitioner testified that Billings was merely the hired helper of his son-in-law and that Billings had not been present at meetings where pictures were taken, the press assembled or at any conversations had with respect to counterfeiting (R. 152).

ARGUMENT

Petitioner's contention that his conviction must be reversed because the jury, in acquitting the co-defendant Billings, necessarily found the testimony of the witness Mohler to be perjured and therefore subject to exclusion as evidence against petitioner, is not entitled to serious consideration.

In making this argument petitioner indulges in what he argues the court of appeals may not do—*i.e.*, speculation as to the mental processes of the jurors (Pet. 11). His argument is incompatible with the well-established principle, to which he gives lip-service, that even if verdicts are inconsistent (a fact which we do not concede under the evidence in this case) such inconsistency is of no legal effect. See *Dunn* v. *United States*, 284 U.S. 390; *United States* v. *Dotterweich*, 320 U.S. 277; *United States* v. *American Stevedores, Inc.*, 310 F. 2d 47 (C.A. 2), certiorari denied, 371 U.S. 969.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
JULIA P. COOPER,
Attorneys.

March 1964

☆ U. S. GOVERNMENT PRINTING OFFICE 1964 724168 7